Secretary, Jaipur Development Authority, Jaipur

Vs

Daulat Mal Jain and Others

Civil Appeals No. 12370 of 1996 with Nos. 12371, 12373 and 12372 of 1996

(K. Ramaswamy, B. L. Hansaria JJ)

20.09. 1996.

JUDGMENT

K. RAMASWAMY, J.

1. The facts of these cases expose the blatant misuse of public office by the Minister of Urban Development, Government of Rajasthan as Chairman of the appellant-Authority; they, in particular demonstrate the danger involved in entrusting unbridled dual powers in a single individual leading to abuse of office on account of lack of counter-check. It would be appropriate to extract from the enquiry report dated 12-11-1992 of the Lokayukta of Rajasthan under Section 10 of the Rajasthan Lokayukta and Up-Lokayuktas Act, 1973 (9 of 1973) as under :

> "In view of what has been stated above, it is prima facie established that Smt. Kamala, the then Hon'ble Minister, Urban Development and Housing Department, Government of Rajasthan-cum-Chairman, JDA Jaipur, Shri M. D. Kaurani, IAS, the then Commissioner, Jaipur Development Authority and Shri Subhebhan Mitra, the then Zonal Officer, Lal Kothi Scheme, JDA, Jaipur, have blatantly misused their official position to favour a few influential and highly placed individuals and have also thereby caused wrongful gain to them and wrongful loss to the Jaipur Development Authority and the public at large. But Smt. Kamala, the then Hon'ble Minister, Urban Development and Housing Department-cum-Chairman, JDA is not now a public servant as defined in Section 2(1) of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973 (for short the 'the Act') because she has ceased to be a Minister. So investigation is not being commenced against her but the investigation deserves to be commenced against S/Shri M. D. Kaurani, IAS and Subhebhan Mitra under Section 1 of the Act, and I order accordingly."

2. Edmund Burke as early in 1780 had lamented the corroding influence of corruption thus :

> "Corrupt influence, which is itself the perennial spring of all prodigality, and of all disorder, which loads us, more than millions of debt; which takes away from our arms wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our constitution."

3. The facts in a nutshell in these cases are as under :

Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 (24 of 1953) (for short 'the Act') was published in the State Gazette on 29-6-1960 acquiring land in Bhojpura and Chuck

Sudershanpura, Tehsil Jaipur, popularly known as Lal Kothi Scheme, which is adjacent to Jaipur City for urban development, viz., for multipurpose project of constructing Legislative Assembly MLA quarters etc. After following the procedure, an award was passed on 9-1-1964 and possession taken later on. Therein, apart from awarding compensation to the owners, the Land Acquisition Officer granted plots ranging between 2000 square yards to 1000 square yards to owners, sub-awardees or nominees in the scheme itself. This Court in Jaipur Development Authority v. Radhey Shyam [(1994) 4 SCC 370], known as Radhey Shyam [(1994) 4 SCC 370] case, had held that the Land Acquisition Officer (LAO) was devoid of the power and jurisdiction under Section 11 to allot part of the acquired land or any land to the landowners etc. in determining compensation under Section 23(1). It was, therefore, held that the award allotting land was void ab initio and it conferred no right on an erstwhile Khatedar/owner to claim possession of the land in execution of the award. The award, confirmed in the decree under Section 26, though had become final, being a nullity, it could be questioned at any stage, when it is sought to be executed/enforced. It was, therefore, held that the execution of such a decree and delivery of the possession in furtherance of the award was invalid, void and inexecutable. These cases spring from the same foul source and being apart of the same scheme and same award, are governed by the above judgment. The khatedar (owner) in this case is one Chhote Lal whose 14 bighas of land had come to be acquired. The LAO awarded 2000 square yards to him. He entered into agreements with respondents Daulat Mal and Raj Kumari to sell 1000, 500, 250 square yards etc. The sale deeds came to be registered on 14-12-1970. The purchasers were described as sub-awardees or nominees, which terms are unknown to the law of property acquired for public purpose.

4. Then came into picture the Minister-cum-Chairman and the so-called Committees. It is now the case of the respondents that pursuant to a public policy, the Government had decided in 1978 to allot the lands to the sub-awardees/nominees @ Rs. 8 per square yard. Further, the Minister, accepting the same, had directed delivery of the possession and subsequently amount was received @ Rs. 8 per square yard or at revised rates of Rs. 50 per square yard; details thereof being not material for the purpose of this case, are omitted. It would appear that, subsequently, the lands were further sub-divided to escalate the net by reducing the area of allotment in the proceedings dated 16-9-1980. Lots were drawn for allotment of the posts on 23-12-1980. They came to be questioned by way of writ petitions in the High Court. The High Court came heavily against the illegality committed by the LAO and the Minister for such allotments being obnoxious, deflecting the scheme and defeating the public purpose by abusing public office. When it was inquired into by the Lokayukta, in the aforestated report, he castigated the persons for the balant abuse of the power and action was accordingly initiated. It shocks the judical conscience in that it did not touch even the fringe of 'actors'. The counsel for the respondents, rightly and in the light of the settled legal position, admitted that the respondents did not acquire any title to the lands sold to them under defective and void title. However, they strongly pressed into service the orders of allotment issued by the Minister, the acceptance of payment and the so-called public policy to support their claim for possession.

5. In this background, the question arises whether the High Court was right in directing allotment of the lands to the respondents since allotment made to others had become final and denial thereof to the respondents would amount to violation of equality clause enshrined in Article 14 of the Constitution, which is now the subject-matter of these appeals ? In fairness, the learned Judges have held that the allotment of the plots was in violation of the scheme and the award of the LAO and did not confer any right to the purchases, sub-awardees or nominees. Yet the relief has been founded on the premise of violation of equality on a part with others who got possession under the void award etc. It directed the appellants to deliver possession of the plots allotted to them on the basis of the

sales and letters of allotment thereof. Thus, these appeal arise from the judgment and order of the Division Bench of the Rajasthan High Court made on 2-9-1993 in Writ Petition No. 680 of 1992 etc.

6. Dr. Shankar Ghosh, learned Senior Counsel appearing in one case and Shri S. K. Bhattacharya appearing in another, contended that in the view of the law laid down in Radhey Shyam case [ILR (1971) 2 Del 311], the direction issued by the High Court is illegal. There is no discrimination for perpetration of wrongful acts in furtherance of void orders. Extension of the equality in Article 14 for breach of law would aid impetus to perpetrate further illegalities. Article 14 is unavailable in this backdrop.

7. M/s. G. L. Sanghi, learned Senior Counsel and M. S. Ganesh, learned counsel for the respondents and S. M. Jain for the petitioner in the third case, contended that the judgment on Radhey Shyam case [(1994) 4 SCC 370] is per incuriam since the relevant provisions under the Act and the Rajasthan Land Acquisition Rules had not been brought to the notice of this Court. The LAO was empowered under the Rules to allot the lands in lieu of compensation; Section 31 of the Central Act which is in pari materia with Section 31 of the Act empowers the LAO to allot land in lieu of compensation. The policy of 1978 further reiterated it. The Government decided to allot land to the awardees, sub-awardees or nominees of the erstwhile owners of the land. In furtherance thereof, allotment came to be made, directions were given for deposit of the value sites pursuant to which the amount came to be deposited. The extent of the land purchased by the respondents is 500 square yards and it was further reduced to 400 square yards and 250 square yards etc. The Government had evolved the policy to mete out the problem of rehabilitation of the awardees, sub-awardees and nominees. The Government, therefore, in implementation of the scheme had allotted the plots, amounts were deposited in furtherance of the policy, irrespective of the fact whether or not the LAO had power to allot to the land to the awardees or sub-awardees or nominees. The policy of the Government to allot plots legitimatizes the allotment made to the respondents. Therefore, the allotment is valid in law. Since some people were given possession and some among them had built houses thereon, the respondents cannot be denied of their right to possession. It is further contended that the respondents having deposited the amount 20 years ago due to the impugned allotment they were denied the right to apply for allotment elsewhere. Consequentially, the respondents now would be rendered without any remedy for allotment. Interference, at this distance of time, would cause undue hardship to the respondents. Though for different reasons, the High Court, therefore, was right in holding that the respondents were discriminated against due to non-delivery of possession of plots to them for construction of their houses.

8. The diverse contentions give rise to the first question : whether the respondents have a right to allotment of the lands ? It is an admitted position that they purchased the lands from Chhote Lal, the erstwhile owner, pursuant to the sale deeds executed by him in 1970 or an agreement of sale etc. Their source of title, therefore, is Chhote Lal, the erstwhile owner. The sales obviously are void since Chhote Lal had no right, title and interest in the land acquired pursuant to notification under Section 4(1) issued on 29-6-1960 and possession taken under Section 16 of the Central Act and equivalent to Section 16 of the State Act. The pre-existing right, title and interest had by Chhote Lal stood ceased and the same were vested in the appellant free from all encumbrances. The nomenclature of sub-awardees or nominees does not get elevated above the source and they had no right, title or interest under void sale except, if at all, only to claim compensation under Section 23(1) of the Act. In Gian Chand v. Gopala [(1995) 2 SCC 528] this Court has held that after the notification under Section 4(1) is published, any encumbrances created by the owner of the land does not bind the Government. The agreement of sale, if any, was frustrated by the publication of

the notification under Section 4(1) and the declaration under Section 6. In Yadu Nandan Garg v. State of Rajasthan [(1996) 1 SCC 334 : JT (1995) 8 SC 179] and a catena of other decisions, this Court has held that the purchases after notification under Section 4(1) published in the Gazette was not lawful which did not clothe the sale with any colour of title as against the State. All encumbrances stand extinguished by operation of Section 16 of the Act. Therefore, the purchaser gets no title to the acquired land. The sale (being opposed to the public policy) was void under Section 23 of the Contract Act, 1872. Consequentially, the respondents acquired no right, title or interest either under the sale deeds or agreement entered into by them with Chhote Lal, the erstwhile owner.

9. The next question is whether there is any policy for allotment of the land to the respondents, independent of the colour of their title ? It is seen from the record that the premise on which the Minister and the Committee headed by the Minister had proceeded to allot the lands to the respondents and others, was the void award made by the LAO giving land to the erstwhile owners, sub-awardees or nominees, apart from compensation given under section 23(1). That premise was knocked of its bottom in the Radhey Shyam case [(1994) 4 SCC 370]. It would be a mockery to call it a policy of the Government, much less a public policy.

10. The Governor calls upon the leader of a political party/groups that command majority in the Assembly to form the Government and appoints him as Chief Minister. On the latter's advice, he appoints other Ministers. Business of the Government gets allocated and is run as per business rules framed under Article 166(3). The executive power of the State Government extends over which the legislature has power to make law. The Governor runs the Executive Government of a State with the aid and advice of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Ministers as public Officers with the assistance of the bureaucracy working in various departments and corporates sectors etc. Though they are expressed in the name of the Governor, each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. The Council of Ministers are jointly and severally responsible to the legislature. He/they is/are also publicly accountable for the acts or conducts in the performance of duties.

11. The Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy. The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or missue the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The Executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions.

12. When a Government in office misuses its powers figuratively, we refer to the individual Minister/Council of Minister who are constituents of the Government. The Government acts

through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head. If the Minister, in fact, is responsible for all the detailed workings of his Department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility : for no Minister can possibly get acquired with all the detailed decision involved in the working of his department. The ministerial responsibility, therefore, would be that the Minister must be prepared to answer questions in the House about the actions of his department and the resultant enforcement of the policies. He owes them moral responsibility. But for actions performed without his concurrence also, he will be required to provide explanations and also bear responsibility for the actions of the bureaucrats who work under him. Therefore, he bears not only moral responsibility but also in relation to all the actions of the bureaucrats who work under him bearing actual responsibility in the working of the department under his ministerial responsibility.

13. All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the department. All government actions, therefore, means action performed by individual persons to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions, social and economic democracy set down in the Preamble, Part III and Part IV of the Constitution. The intention behind the government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

14. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority of public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as a distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same.

15. In the Encyclopaedia of Democracy by Seymour Martin Lipset, Vol. 1, p. 310, in the Chapter 'Corruption', it is stated that corruption is an abuse of public resources for private gain. The occasions for political corruption increase when control on the activity of public administrators are fragile and the division of power between political actors and the public bureaucrats, as well as between the Government and the middleman, is unclear. It is difficult to discover and punish cases

of corruption. Research has shown that political corruption tends to be more widespread in authoritarian or totalitarian regimes and when public opinion and the press are unable to denounce corruption. Corruption develops because of confusion about the borders between State and society and between traditional and modern values. It can be excepted to grow during phases of transition. Corruption should disappear in modern stable democratic societies. Instead, it is growing. Since State intervention in economic and social life has increased the occasions for political corruption, new technologies have increased the cost of electoral campaigns and the professionalisation of political careers has increased the number of those who have to make a living from politics rather than living for politics. Corruption has not disappeared. Corruption has dangerous consequence for politics. Although political corruption is more widespread in non-democratic regimes, it is particularly dangerous for democracy because it undermines two of the major principles on which democracies are based : the equality of citizens' rights and the transparency of the political decision-making process. Bribes open the way for access to the State for those who are willing to pay and can afford the price. The situation may leave non-corrupt citizens with the belief that one 'counts' only if one has the right personal contacts with those who hold power. Because of its illegal nature, corruption increases the range of public decisions that are made in secrecy. It was suggested that internal controls on public bureaucracies through administrative controls and accounting procedures as well as ombudsman systems for public complaints, are remedies to control corruption. The rules of codes of conduct for political executives, public servants and private entrepreneurs, emphasising merit and regulated system of appointment in State bureaucracy and stimulating pride in public service, would generate remedies for political corruption.

16. In Director of Public Prosecutions v. Holly [(1977) 1 All ER 316 : (1977) 2 WLR 178 : 1978 AC 43 (HL)], the expression "public body" came up for consideration. The applicability of Prevention of Corruption Act, 1947 was not restricted to local authorities but referred to any public body having public or statutory duties to perform and which carried on activities of public interest. In that behalf, House of Lords had held that the Prevention of Corruption Act was restricted to local authorities; it was applicable to any body which has public and statutory duties to perform and bodies which perform those duties and carry out their transactions for the benefit of the public and not for private profit. Accordingly, it was held that the persons who perform public functions are liable to prosecution for corruption. Similar views were expressed in R. v. Andrews Weatherfoil Ltd. [(1972) 1 All ER 65 : (1972) 1 WLR 188], Rother Valley Rly. Co. Ltd. v. Ministry of Transport [(1972) 2 WLR 1041 (ChD)]; R. v. Smith [(1960) 2 WLR 164 : (1960) 1 All ER 256 : (1960) 2 QB 423 (CCA)]; and R. v. Braithwaite [(1983) 2 All ER 87 (ChD)].

17. The Court, therefore, would be required to consider whether the policy sought to be relied on and directed by the Minister was to further public good or was a means to fritter away the public property for personal gain or to misuse public power. The object of publication of the notification under Section 4(1) in the Official Gazette is to give notice to the owner that the land is needed for public purpose and he is prevented to create any sort of encumbrance on the land with effect from that date etc. The land, if ultimately acquired, vests in the State under Section 16 or 17(2) of the Act free from all encumbrances. The public policy of the Government should only be to further the public purpose and issue of declaration is the conclusive proof of public purpose under Section 6(1) or any other similar public purpose. Limited public purpose given under Section 31(3), by operation of which the LAO/Collector is empowered, after the section is accorded by the appropriate Government, with the liberation of non obstante clause is to allot any other land, in lieu of money compensation only, to such persons having a limited interest in such land, either by the grant of some other lands in exchange or remission of land revenue on other lands held under the same title, or in such other way as may be equitable "having regard to the interest" of the persons having

limited interest in the land.

18. In other words, the public policy under the Act is that the acquired land should be used only for public declared under Section 6(1) of the Act or any other public purpose and, under no circumstances, for any private purpose. The limited relaxation of public power entrusted with the LAO is to allot any other land, if available to the owner with limited interest or remission of land revenue when limited interest is acquired for public purpose.

19. We may at this juncture dispose of the contention that the ratio in Radhey Shyam case [(1994) 4 SCC 370] is per incuriam. The basic postulate of the contention is the omission to refer to Rules 31 and 36 of the Rajasthan Land Acquisition Rules, 1956. Rule 31 was made to guide the exercise of power of the Collector (LAO) under Section 31(3) of the Act. As seen, the Government has empowered the Collector to allot "any other land" in lieu of money compensation only when the land acquired belongs to a person having "limited interest in the land", like widow's estate or minor's estate, Mutawali etc. In that behalf, Rule 31 amplifies the exercise of the power by the authorised LAO. It says that the Collector cannot force a party to take land in lieu of cash. Where, however, the interest of the party is so limited, as in the case of a trustee of a wakf property or a Hindu widow, as to make it extremely difficult, if not impossible, to arrive at an adequate case estimate of its value or where, from the circumstances of a case, it is impossible to place the parties concerned by cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the Collector to arrange to award land (subject to the same limitation of interest) in lieu of cash. In Radhey Shyam case [(1994) 4 SCC 370] the scope of sub-section (3) of Section 31 has been considered and explained in extenso. Rule 31 is only to elongate the discretion which the LAO is expected to exercise in awarding land in lieu of cash consideration and the circumstances in which it would be done. Equally, Rule 36 deals with disposal of the excess land acquire by the Collector for a company and imposition of the conditions for sanction of transfer of excess land. Therefore, the absence of reference to them does not make any dent into the principle of law laid in Radhey Shyam case [(1994) 4 SCC 370].

20. That apart, these two rules merely emphasis the limited power given to the Government and to the LAO to impose the conditions and restrictions to attain the public purpose for which the land is acquired and is not intended to fritter away public property for private purposes or gain or illegal gratification.

21. The Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974, were made in exercise of power under the Rajasthan Urban Improvement Act, 1959 (35 of 1959). Therein, elaborate procedure has been provided to grant lease, restrictions thereunder, assessment of the ground rent, preparation of the scheme, sale or disposal of the land, reservation of the land for residential plots or allotment of non-residential plots at concessional rates to the specified categories, reservation of non-residential lands, fixation of the premium, reserved prices or fixed prices, assigning allotment and sale of non-residential land, allotment of residential plots at concessional rates, priorities, categories, procedure, size, the procedure for recovery of cost of the land, resale of the plot to recover for non-compliance of conditions, allotment of land to public or charitable institutions, to institutions other than charitable and public institutions, grant of sale deeds, etc. Allotment to the respondents obviously was not under these Rules nor is in their case.

22. Therefore, there was no policy laid by the Government and it cannot be laid contrary to the aforestated rules and no such power was given to individual Minister by executive action, as the land was already notified conclusively under Section 6(1) for public purpose, namely, earmarked

scheme. Since the persons whose land was acquired were not owners having limited interest therein, qua the owners having lost right, title and interest therein, the sub-awardees or nominees, after the acquisition under Section 4(1), would acquire no title to the land nor such ultra vires acts of the Minister would bind the Government. The actions, therefore, taken by the Minister-cum-Chairman of the appellant authority and bureaucrats for obvious reasons would not clothe the respondents with any vestige of right to allotment. Acceptance of the contentions of the respondents would be fraught with dangerous consequences. It would also bear poisonous seeds to sabotage the schemes defeating the declared public purpose. The record discloses that such allotment in many a case was in violation of the Urban Land Ceiling Act which prohibits holding the land in excess of the prescribed ceiling limit of the urban land. In some instances, a person whose land of 500 square yards was acquired, was compensated with allotment of 2000 square yards and above, which is against the public policy defeating even the Urban Land Ceiling Act. Would any responsible Minister or a bureaucrat, with a sense of public duty and responsibility, transfer such land to sabotage the planned development of the scheme ? Answer has obviously to be in the negative. The necessary inference is that the policy does not bear any insignia of a public purpose, but appears to be a device to get illegal gratification or distribution of public property defeating the public purpose by misuse of public office.

23. There is no iota of evidence placed on record that under the so-called policy, anyone from general public could equally apply for allotment of the plots or was eligible to apply for such allotment nor any such general policy was brought to our notice. The allotment has benefited only a specified class, namely, the awardees, sub-awardees or nominees and none else. The decision by the Minister or the actions of bureaucrats was limited to the above which included the respondents. Legitimacy was given to the void acts of Chottey Lal, the erstwhile as well as the LAO. Directions were given by the Minister and the bureaucrats acted to allot the land under the very void acts. They are ultra vires the power. These acts are in utter disregard of the stature and the rules. Therefore, by no stretch of imagination it can be said to have the stamp of public policy; rather it is a policy to feed corruption and to deflect the public purpose and to confer benefits on a specified category, as described above.

24. The question then is whether the action of not delivering possession of the land to the respondents on a par with other persons who had possession is an ultra vires act and violates Article 14 of the Constitution ? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 person were cancelled and possession was not given. He listed various cases pending on this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone the court to get the orders of the LAO enforced, the appellant-Authority resisted such actions taking consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favoritism to others can be laid at the door of the present set-up of the appellant-Authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set-up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of Minister and predecessor bureaucrats through the process of law so much so that illegal and ultra vires acts are not allowed to be legitimised nor are to be perpetuated by aid of Article 14. That apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and

persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts ? Answer is obviously no.

25. In Yadu Nandan Garg case [(1996) 1 SCC 334 : JT (1995) 8 SC 179], it was contended that one of the persons whose land was acquired, had the benefit of exemption from the acquisition; writ petition was filed seeking similar benefit. When it was contended that it was violative of Article 14, this Court in para 5 had held that : (SCC p. 336)

> "the wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination."

26. In Coromandel Fertilizers Ltd. v. Union of India [1984 Supp SCC 457 : 1984 SCC (Tax) 225], it was held in para 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with the excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was will founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

27. In Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745], allotment of the sites was the subject-matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in para 8 at p. 750 had held that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken was unsustainable in law and indefensible in principle. The mere fact that the respondent-Authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-Authority to repeat the illegality to cause another unwarranted order. The extraordinary and discrimination power of the High Court under Article 226 cannot be exercised for such a purpose.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice it to hold that the illegal allotment founded ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other, words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the

respondents.

29. It is then contended that the respondents have been deprived of the right to apply for a allotment of a plot of land in this or any other scheme right from 1970; in view of the long lapse of time and the escalation of the prices, it would be impossible for the respondents to purchase any site. To permit the authorities to cancel the allotment made in favour of the respondents would cause great injustice. Therefore, it is not a fit case for this Court to interfere under Article 136.

30. We have given our considered thought to the fervent and persuasive plea of Shri Sanghi. There are two aspects of the matter. The first is that this Court has the duty to correct every obvious ultra vires or illegal exercise of power or misuse of the same. Failure to do so would send wrong signals that the court legitimises wrong actions. There is, however, force in the contention of Shri Sanghi that if allotments would be cancelled by this Court, it would be virtually impossible for the respondents to acquire residential plots anywhere now in a city like Jaipur in view of the great increase in prices of land in the meantime. We have not been able to overtook or ignore this facet of the case; more so, because it may be that the respondents herein had not obtained the allotments by taking recourse to any illegal means. So, we have felt persuaded to agree with Shri Sanghi that we may not invoke our power under Article 136 to undo the impugned order of the High Court, even if the same be illegal, according to us.

31. So, we have decided not to disturb the direction of the High Court, as a very special case. We would, however, modify the same in two respects. First, the respondents would be given allotment in some other scheme. Secondly, the area of the land to be allotted would be uniform. In similar cases, this Court has favoured uniformity as regards the area. As the plot would be needed for residential purpose, we think an area of 250 square yards would be enough and proper. We, therefore, order for an allotment of plot measuring about 250 square yards to each of the two respondents in some other scheme of the JDA. This would, however, be at the rate which was prevailing when the allotments were first made to them. Since we laid down the law for the first time, we have not interfered with the direction of the High Court but have suitably modified it. This direction, therefore, will not be used as a precedent.

32. Appeals arising out of SLPs (C) Nos. 20857 and 20936 of 1993 and CC No. 25107 of 1994 are disposed of accordingly. Appeals arising out of SLP (C) No. 2492 of 1990, which is by Shanti Swaroop against the judgment of the High Court in A. K. Garg and connected cases is, however, dismissed. There would be no order as to costs.